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MISSOULA, MT

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PATRICK E. DUFFY

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

TODD COLIN OATMAN,)	CV 05-06-M-DWM-JCL
)	
Petitioner,)	
)	
vs.)	ORDER
)	
MIKE MAHONEY,)	
)	
Respondent.)	
_____)	

Petitioner Oatman filed this Petition on January 14, 2005. On February 11, 2005, Petitioner filed a notice of change of his address. That was Petitioner's last filing in this case. All subsequent orders have been sent to the new address at the Butte Prerelease Center.

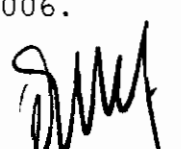
On May 24, 2006, United States Magistrate Judge Leif B. Erickson gave the Plaintiff ten days to appear and show cause why his failure to prosecute should not result in dismissal of the Complaint. Plaintiff did not respond to the Order. Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendations in this matter on October 31, 2006, in which he recommends dismissal

of the Complaint for failure to prosecute under Fed. R. Civ. P. 41(b). Petitioner did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

Judge Lynch weighed the five factors to be considered in deciding whether to dismiss for failure to prosecute, as set out in Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002). Judge Lynch found that the interest in expeditious resolution of cases, the Court's need to manage its docket, the prejudice to the Defendants and the availability of less drastic options all favor dismissal, while only the preference for resolution of cases on the merits does not. On this basis Judge Lynch recommended that the case be dismissed for failure to prosecute. I can find no clear error with Judge Lynch's recommendation and therefore adopt it in full.

Accordingly, IT IS HEREBY ORDERED that the Petition is dismissed for failure to prosecute under Fed. R. Civ. P. 41(b).

DATED this 6th day of December, 2006.



Donald W. Molloy, Chief Judge
United States District Court